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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,770	10/14/2003	Thomas W. Kampf	02316.1220USD1	6337
23552	7590	02/16/2011	EXAMINER	
MERCHANT & GOULD PC			OMGBA, ESSAMA	
P.O. BOX 2903			ART UNIT	PAPER NUMBER
MINNEAPOLIS, MN 55402-0903			3726	
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			02/16/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/685,770

Applicant(s)

KAMPF ET AL.

Examiner

Essama Omgba

Art Unit

3726

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 August 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5 and 6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5 and 6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)

Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. In view of the Appeal Brief filed on August 17, 2010, PROSECUTION IS HEREBY REOPENED. New grounds of rejections are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/DAVID P. BRYANT/

Supervisory Patent Examiner, Art Unit 3726

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-3, 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bernard (US Patent 6,450,458) in view of Miranda (US Patent 6,107,575).

Bernard discloses a method of assembling a cable routing system 200 wherein a base element 220 is provided, the base element comprising a planar top surface having a linear mating edge on opposite sides of the planar top surface, a plurality of side elements 210 mounted to the base element by being integrally formed with the base element, a first plurality of the side elements 210 having an upstanding wall portion extending to a vertical height above the planar top surface of the base elements, a second plurality of the side elements defining side exits extending transversely to the edge of the base element (figs. 10 and 12) and down spout portions (fig. 13) to define a cable pathway extending from the planar top surface to a location below the planar top surface, see figures 1, 6, 10, 12 and 13. Although Bernard does not disclose each linear mating edge defining a first mounting structure, a plurality of side elements mounted to the base element along the linear mating edges by attaching second mounting structures formed on the side elements with the first mounting structure of the respective linear mating edge, the first and second mounting structures being connected to couple the side elements to the base elements, however such construction of a cable routing system is known as attested by Miranda, see figures 1, 2, and 5-7. Therefore it would have been obvious to form the cable routing system of Bernard from separate elements as taught by Miranda, in order to be able to transport the cable routing system in a flat space-saving condition and to form it, at a site of use, into a U-Shape cable channel by appropriately connecting the base and side elements. The examiner notes that such modification of the method of Bernard would have been obvious to try since it would have amounted to choosing from a finite number of

Art Unit: 3726

identified, predictable solutions (cable routing systems consisting of two side walls and a bottom wall that are integral or cable routing systems consisting of two side walls and a bottom wall that are separately formed and subsequently attached to each other to form the cable routing system), with a reasonable expectation of success. Regarding the recitation “the planar top surface being planar along an entirety of the base element extending between the first end and the second end, including between a first of the linear mating edges to a second of the linear mating edges, and between the first mounting structure of the first linear mating edge to the first mounting structure of the second linear mating edge”, the examiner submits that incorporating the mounting structures taught by Miranda in the cable routing system of Bernard would result in a planar top surface that is planar along an entirety of the base element extending between the first end and the second end, including between a first of the linear mating edges to a second of the linear mating edges, and between the first mounting structure of the first linear mating edge to the first mounting structure of the second linear mating edge as base element 220 of Bernard would be provided with the mounting structures illustrated in figure 2 of Miranda (see figure 1 of Bernard and figure 2 of Miranda).

Applicant should note that the cable routing system of Bernard is formed of a plurality of base and side elements connected to each other. Also such cable routing systems are typically mounted so that the base elements are mounted at a vertical height above a telecommunications bay.

Response to Arguments

4. Applicant's arguments filed August 17, 2010 have been fully considered but they are not persuasive.

In response to Applicant's argument that the purported combination lacks a base with a planar surface and linear mating edges with continuous cross-section, the examiner respectfully disagrees. One of ordinary skill in the art, when presented with both the teachings of Bernard and Miranda, would find it obvious to separately form the planar base element with a planar top surface of Bernard with the first mounting structures of Miranda. Further the base element of Miranda includes linear mating edges with a continuous cross-section.

In response to Applicant's argument that the references teach away from the purported combination because Bernard states that "The coupler 100 has an inner wall consisting of two side walls 110 and a bottom wall 120, which are preferably integral and continuous", the examiner submits that the term "preferably" suggests that preference is given to a particular embodiment in lieu of alternative ones, and does not exclude different embodiments. Therefore the only thing that can be inferred from the cited portion of the Bernard reference is that Bernard favors an integrally formed routing system over one that is formed from separate elements for example.

In response to Applicant's argument that there is no suggestion provided as to how one would take the fittings disclosed in figures 10 and 12 of Bernard and incorporate the linear sections disclosed by Miranda to arrive at the claimed invention,

Art Unit: 3726

the examiner submits that the proposed combination does not suggest coupling the fittings of Bernard to the side elements of Miranda but rather modifying the integral routing system of Bernard into one formed from separate elements as taught by Miranda.

In response to Applicant's argument that the "locking structures" of Miranda are elevated with respect to the top surface of the element 2 and that the Office action fails to suggest how one would modify the locking structures disclosed by Miranda to create a planar surface, the examiner submits that the claims do not require the locking structures to be in the same plane as the top surface of the base element. Further, Applicant's "locking structures" are actually located *below* the top surface of the base element and do not create a planar surface in conjunction with the base surface (e.g. see Figure 11 of applicant's drawings).

In response to Applicant's argument that there is no suggestion as to how or why one skilled in the art would be motivated to modify the fittings disclosed by Bernard based on the channels disclosed by Miranda to arrive at the claimed methods, the examiner once again submits that the proposed combination does not suggest modifying the fittings disclosed by Bernard but rather modifying the integral routing system of Bernard into one formed from separate elements as taught by Miranda. The fitting of Bernard could be formed in separate elements in the same way the routing system would be formed in separate elements in view of the teachings of Miranda. There are no specific structures recited by Applicant except for broadly recited first and

Art Unit: 3726

second mounting structures which, as shown in the above rejections, are taught by Miranda.

In response to Applicant's argument that none of Bernard and Miranda discloses or suggests that "the locking structures fall within the perimeter, which has a planar top surface along its entirety" as required by claim 3, the examiner respectfully disagrees. As pointed out above, the claims do not require the locking structures to be in the same plane as the top surface of the base element. Further Applicant's "locking structures" are below the top surface of the base element and do not create a planar surface.

In response to Applicant's argument that the Office action fails to disclose or suggest how and why one would have modified the locking structures of Miranda to accommodate a downspout, the examiner submits that it would not be necessary to modify the locking structures to accommodate a downspout as a downspout could be mounted at the end of a cable routing section or a section of a side wall could be cut out to accommodate a downspout.

In view of the above remarks, the examiner maintains that a *prima facie* case of obviousness has been established in the instant application.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Art Unit: 3726

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Essama Omgba whose telephone number is (571) 272-4532. The examiner can normally be reached on M-F 9-6:30, 1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bryant can be reached on (571) 272-4526. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Essama Omgba/
Primary Examiner, Art Unit 3726

eo
February 13, 2011